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OCA 2268-89

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OFFICE OF CONGRESSIONAL AFFAIRS

Routing Slip

	ACTION	INFO
1. D/OCA		X
2. DD/Legislation	XXX	
3. DD/Senate Affairs		X
4. Ch/Senate Affairs		
5. DD/House Affairs		X
6. Ch/House Affairs		
7. Admin Officer		
8. FOIA Officer		
9. Constituent Inquiries Officer		
10. DD/OCA		X
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SUSPENSE 25JUL89
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Action Officer:

Remarks: no comments
25 July 89

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OCA FILE LEG OCA 2268-89

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

15 total

July 20, 1989

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -

Department of Agriculture - Wanda Worsham - 382-1516
Department of Commerce - Michael Levitt - 377-3151
Department of Defense - Sam Brick - 697-1305
Department of Education - John Kristy -732-2670
Department of Energy - Bob Rabben - 586-6718
Department of Health and Human Services - Fran White - 245-7760
Department of Housing and Urban Development - Edward Murphy - 755-7093
STAT
Department of Interior - Ralph Hill - 343-6706
Department of Justice - Carol Crawford - 633-2141
Department of Labor - Seth Zinman - 523-8201
Department of State - Bronwyn Bachrach - 647-4463
Department of Transportation - Tom Herlihy - 366-9293
Department of the Treasury - Richard Carro - 566-8523
Department of Veterans Affairs - Donald Ivers - 233-3832
Central Intelligence Agency -
Environmental Protection Agency - Henry Schilling - 382-5414
National Aeronautics Space Administration - Lynn Heninger - 453-1948
National Science Foundation - Charles Herz - 357-9435
Small Business Administration - Clifford Downen 653-9540

SUBJECT: Office of Personnel Management draft bill "To extend and increase the flexibility of the Performance Management and Recognition System, and for other purposes." (See testimony outlining this proposal, Referral Memorandum of July 14, 1989.)

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than COB Tuesday, July 25, 1989.

Questions should be referred to Hilda Schreiber (395-7362), the legislative analyst in this office.

Naomi R Sweeney

Naomi R. Sweeney for
Assistant Director for
Legislative Reference

Enclosure

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UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

Honorable Thomas S. Foley
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

The Office of Personnel Management submits herewith a legislative proposal "To extend and increase the flexibility of the Performance Management and Recognition System, and for other purposes." We request that this proposal be referred to the appropriate committee for early consideration.

The Performance Management and Recognition System (PMRS) was established in 1984 in an effort to provide a clear and certain relationship between performance and pay for the Government's supervisors and managers in GS-13 through GS-15. In its five years of operation, the system has been helpful in establishing performance expectations and identifying and rewarding noteworthy accomplishments by the Government's middle managers. It has become clear, however, that problems exist with some aspects of the system's operations. While no consensus has developed on possible changes, there is growing awareness that every aspect of the system is not equally well suited to every organizational setting in the Government. In these circumstances, we believe it would be desirable to provide more flexibility to adapt the system to the needs of different agencies.

Accordingly, the Office of Personnel Management has prepared this legislative proposal, which incorporates the following features:

- An extension of PMRS, now scheduled to expire on September 30, 1989, for another 5 years;
- A minor modification of PMRS to ensure that fully successful performers receive salary advancements that are not less than those received by fully successful performers under the General Schedule;
- A requirement for a performance improvement plan and an opportunity to improve for each employee whose performance is substandard, to assist the employee in improving to at least the fully successful level;
- Beginning next year, authority for agencies to establish alternative PMRS systems suited to the particular needs of each agency;

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- The alternative PMRS systems could include, for instance, 3 rather than 5 performance rating levels, and could provide some differences in pay progression from the regular PMRS;

- Greater flexibility would be provided in performance awards under the alternative systems, both in the size of the awards and in deciding who should get them, although the same minimum and maximum limits on total agency payouts would apply under the alternative systems as apply under PMRS; and

- After the third year, OPM would make a major assessment of PMRS and the alternative systems so that all interested parties would be in a better position to work together and decide what long-term approach to pay for performance is most desirable.

We believe that this approach, continuing the current PMRS and providing the flexibility for alternative approaches, will best suit the needs of the Government in the next several years, as we strive to make agencies and their employees more accountable for the successful operation of the Government.

The Office of Management and Budget advises that there is no objection to the submission of this proposal, and that its enactment would be in accord with the program of the President.

A similar letter is being sent to the President of the Senate.

Sincerely,

Constance Berry Newman
Director

Enclosures

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A BILL

To extend and increase the flexibility of the Performance Management and Recognition System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Performance Management and Recognition System Amendments of 1989".

Sec. 2. (a) Section 4302a of title 5, United States Code, is amended by striking out paragraphs (5) and (6) of subsection (b) and inserting in lieu thereof the following:

"(5) establishing a performance improvement plan for any such employee whose performance is below the fully successful level to provide assistance to the employee and give the employee a period during which the employee will have the opportunity to improve performance to the fully successful level or better; and

"(6) reassigning, reducing in grade, or removing any employee whose performance, despite the opportunity provided under paragraph (5), does not improve to and remain at the fully successful level or better.".

(b) Section 5404 of title 5, United States Code, is amended to read as follows:

"§5404. Merit increases

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

"(a) For purposes of this section--

"(1) the term "applicable first reference rate", as used with respect to the rate of basic pay of an employee, means the rate equal to the sum of--

"(A) the minimum rate of basic pay provided under section 5332 for the grade of the position held by such employee; and

"(B) one-third of the difference between the maximum rate of basic pay provided for such grade under such section and the minimum rate of basic pay so provided;

"(2) the term "applicable second reference rate", as used with respect to the rate of basic pay of an employee, means the rate equal to the sum of--

"(A) the minimum rate of basic pay provided under section 5332 for the grade of the position held by such employee; and

"(B) two-thirds of the difference between the maximum rate of basic pay provided for such grade under such section and the minimum rate of basic pay so provided;

"(3) the term "merit increase" means, with respect to a grade, an increase equal to one-ninth of the difference between the maximum rate of basic pay provided for such grade under section 5332 and the minimum rate of basic pay so provided; and

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"(4) a reference to the performance rating of an employee shall, for purposes of any increase which may take effect under this section in a year, be considered to be a reference to the level of performance of such employee, as determined for the latest appraisal period under section 4302a (or an equivalent rating system) before the effective date of such increase.

"(b) Subject to section 5405(a)(1)(A), under regulations prescribed by the Office of Personnel Management, the rate of basic pay of an employee covered by this chapter shall be increased each year in accordance with the applicable provisions of subsection (c) of this section, effective as of the beginning of the first applicable pay period commencing on or after October 1 of such year.

"(c)(1)(A) If the rate of basic pay of the employee is less than the applicable first reference rate on the day before the effective date of an increase under this section, and the performance of such employee is rated at the fully successful level or either of the 2 levels above the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to a merit increase.

"(B) If the rate of basic pay of the employee equals or exceeds the applicable first reference rate but is less than the applicable second reference rate on the day before the effective date of an increase under this section, and the performance of such employee is rated--

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"(i) at the level 2 levels above the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to a merit increase; or

"(ii) at the fully successful level or the level 1 level above the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to one-half of a merit increase.

"(C) If the rate of basic pay of the employee equals or exceeds the applicable second reference rate on the day before the effective date of an increase under this section, and the performance of such employee is rated--

"(i) at the level 2 levels above the fully success ful level, the rate of basic pay of the employee shall be increased by an amount equivalent to a merit increase;

"(ii) at the level 1 level above the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to one-half of a merit increase; or

"(iii) at the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to one-third of a merit increase.

"(2) The rate of basic pay of an employee whose performance is rated at either of the 2 levels below the fully successful level may not be increased under this section for the year involved.

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

"(d) The Office of Personnel Management shall prescribe regulations under which this section shall be applied in the case of an employee for whom a determination under section 4302a (or an equivalent rating system) for the latest appraisal period is not available.".

(c) Section 5406(c)(2)(A) of title 5, United States Code, is amended--

(1) in subparagraph (i)(III), by inserting "or thereafter" immediately before the period at the end thereof; and

(2) in subparagraph (ii), by striking out "for each of the 5 fiscal years during which this chapter is in effect".

(d) Section 5410 of title 5, United States Code, is amended by striking out "September 30, 1989" and inserting in lieu thereof "September 30, 1994".

(e) The amendments made by this section shall take effect on the date of enactment of this Act.

Sec. 3.(a) Section 4302a of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(h)(1) In the case of an employee covered under an alternative performance management and recognition system under section 5406a, an agency may establish an alternative performance appraisal system that may include the following:

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

"(A) the use of a statement of the work objectives of the employee's position, jointly developed by the supervising official and the employee, rather than critical elements and a performance standard for the position for the purposes of subsections (a)(2) and (b)(2)-(4);and

"(B) notwithstanding subsection (b)(1), the use of not fewer than 3 nor more than 5 levels of summary performance ratings, with at least one level above and at least one level below a base level, which base level shall represent a fully acceptable level of performance.".

(b) Section 5401 of title 5, United States Code, is amended by striking out "a performance management and recog nition system" and inserting in lieu thereof "performance management and recognition systems".

(c)(1) Title 5, United States Code, is amended by inserting after section 5406 the following new section:

"§5406a. Alternative performance management and recognition systems

"(a) An agency may establish one or more alternative performance management and recognition systems for employees of the agency who are subject to this chapter.

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

"(b)(1) Notwithstanding sections 5403 and 5404 to the extent those sections are inconsistent with the provisions of this section, employees under an alternative performance management and recognition system shall be entitled to general pay increases and merit increases only in accordance with the provisions of this subsection.

"(2) With respect to general pay increases under section 5403, an employee whose performance is rated at the base level or higher shall receive the full general pay increase. If there are 2 summary rating levels below the base level, an employee whose performance is rated 1 level below the base level shall receive one-half of the full general pay increase, and an employee whose performance is rated 2 levels below the base level may not receive an increase under section 5403. If there is only 1 summary rating level below the base level, an employee whose performance is rated below the base level may not receive an increase under section 5403.

"(3) With respect to merit increases under section 5404--

"(A) An employee whose performance is rated below the base level may not receive a merit increase;

"(B) An employee whose performance is rated at the base level or higher and whose rate of basic pay is less than the applicable first reference rate shall receive an increase in rate of basic pay equivalent to a merit increase;

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Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

"(C) An employee whose performance is rated at the *base* level and whose rate of basic pay equals or exceeds the applicable first reference rate but is less than the applicable second reference rate shall receive an increase in rate of basic pay equivalent to one-half of a merit increase;

"(D) An employee whose performance is rated at the base level and whose rate of basic pay equals or exceeds the applicable second reference rate shall receive an increase in rate of basic pay equivalent to one-third of a merit increase;

"(E) An employee whose performance is rated above the base level and whose rate of basic pay equals or exceeds the applicable first reference rate but is less than the applicable second reference rate shall receive an increase in rate of basic pay prescribed in advance by the agency for the alternative performance management and recognition system, but such increase may not be less than one-half of a merit increase or more than a merit increase; and

"(F) An employee whose performance is rated above the base level and whose rate of basic pay equals or exceeds the applicable second reference rate shall receive an increase in rate of basic pay prescribed in advance by the agency for the alternative performance

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

management and recognition system, but such increase may not be less than one-third of a merit increase or more than a merit increase.

"(c)(1) Notwithstanding subsections (a) and (b) of section 5406, an employee under an alternative performance management and recognition system whose performance for an appraisal period is rated at the base level or higher may be paid a performance award only under this subsection for such period.

"(2) The amount of a performance award under this subsection may not be less than 2 percent nor more than 20 percent of the employee's annual rate of basic pay.

"(3) The aggregate amount of performance awards paid under this subsection shall be subject to minimum and maximum limitations prescribed in subsection (c) of section 5406.

"(4) A failure to pay a performance award under this subsection may not be appealed.

"(5) A performance award paid to an employee under this subsection shall be in addition to the basic pay of the employee and any cash award paid under section 5407.".

(2) The table of sections for chapter 54 of title 5, United States Code, is amended by inserting after the item relating to section 5406 the following:

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

"5406a. Alternative performance management and recognition systems.".

(d) Section 5408 of title 5, United States Code, is amended--

(1) by inserting "(a)" at the beginning of the body thereof;

(2) by amending subsection (a), as so designated by paragraph (1), by striking out "system" and inserting in lieu thereof "systems"; and

(3) by adding at the end thereof the following new subsection:

"(b) the report submitted under subsection (a) relating to the fiscal year 1993 performance appraisal cycle shall be submitted not later than June 30, 1993, and shall include an overall assessment of the relative effectiveness of the operations of the systems established by this chapter, and recommendations for such legislative action as the Director of the Office of Personnel Management may consider appropriate.".

(e) The amendments made by this section are effective on February 1, 1990.

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

Declassified in Part - Sanitized Copy Approved for Release 2014/04/28 : CIA-RDP92M00732R001000080031-5

SECTION ANALYSIS

To accompany a bill

To extend and increase the flexibility of the Performance Management and Recognition System, and for other purposes.

The first section provides a short title for the bill, the "Performance Management and Recognition System Amendments of 1989."

Section 2 consists of amendments to title 5, United States Code, that would, under subsection (e), be effective upon enactment

Subsection (a) would amend section 4302a to add to current agency performance appraisal plans for the Performance Management and Recognition System a requirement that such plans include provision for performance improvement plans for employees whose performance is less than fully successful. An employee whose performance does not improve to the fully successful level or better would be subject to reassignment, reduction in grade, or removal.

Subsection (b) would amend section 5404 of title 5 to change the size of merit increases received by fully successful performers in the middle third of the rate range for the grade. Instead of the current increase equivalent to one-third of a within-grade increase, they would receive the equivalent of one-half of a within-grade increase.

Subsection (c) would amend section 5406(c) of title 5 to continue in effect for the next 5 years the fiscal year 1989 minimum and maximum performance award payout percentages, namely 1.15 to 1.5 percent of payroll.

Subsection (d) would extend the operation of the Performance Management and Recognition System for another 5 years, until September 30, 1994.

Section 3 of the bill consists of amendments to title 5, United States Code, that would, under subsection (e), be effective on February 1, 1990.

Subsection (a) would amend section 4302a to permit agencies that choose to establish an alternative performance management and recognition system, discussed below, to establish an alternative performance appraisal system as well. An alternative performance appraisal system could provide for appraisal by comparison with a statement of work objectives rather than a performance standard, and could provide for as few as 3 or as many as 5 levels of summary performance ratings.

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